IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 897 OF 2006

The State of Maharashtra ..Applicant

Vs.

Virendranath Bhagwatprasad Tiwari ..Respondent

Mr. P.A. Pol, APP for applicant-State.
Mr. V.B. Tiwari-respondent-in-person present.

CORAM: B.H. MARLAPALLE, J.

Date : September 26, 2007.

P.C.:

1. Heard Mr. Pol, the learned APP. Respondent-accused appears as party-in-person. The respondent was tried in SC/ST Special Case No.2 of 2003 by the learned Special Judge at Mumbai for the offence punishable under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the learned Special Judge was pleased to acquit the accused vide his Judgment and Order dated 16/9/2005. Hence, this application for leave to appeal under Section 378 (3) of Cr.P.C.

2. The prosecution examined in all five witnesses, whereas the accused stepped in the witness box as D.W.1 and examined other four witnesses. PW 1 - Ms. Chitra Salunke was the complainant and she alleged that the incident had taken place in the presence P.W.2 Deepak Mane and PW 3 - Anna Dongre in the college premises on 2/11/2002 which was admittedly a holiday for the concerned college i.e. Siddharth College of Law. The allegations against the respondent were,

> "Salunke, Tumane Mere Khilaf Police May Complaint Likhi Hai Ki Maine Tujhe Nich Jaatki Gandi Aurat Bolaa. Soon, Police Mera Kuchch Nahi Bighaad Sakti. Ab Mai Tere Samane Bolata Hu, Tu Gandi Aurat Hai, Tu Nich Jaatki Achchut Aurat Hai, Ab Tu Mera Kya Kar Legi? Bol."

3. In the complaint it was stated that the complainant belongs to Hindu Chambhar caste which is a scheduled caste in the State of Maharashtra and the respondent no.1 is a Brahmin. The complaint came to be filed on 3/11/2002 by PW 1 with the Azad Maidan

Police Station and PW 4 and PW 5 had investigated the complaint and filed the charge-sheet. Undoubtedly, the prosecution proved that though on 2/11/2002 it was a holiday, the office of the College was working on that day with the help of some staff members, including PW 1, PW 2 and PW 3. The trial court held that the testimony of PW 2 Mane and PW 3 Dongre could not substantiate the prosecution case and the said testimony was not reliable. In addition, the trial court proceeded to examine whether the alleged derogatory word "Achhut" if taken as it is would come within the ambit of Section 3(1)(x) of the Act so as to make out an offence. PW 2 and PW 3 stated that said word was not used, but the incident had occured in the office located on the third floor of the Anand Bhavan Building and after the closure of the office business around 1.30 p.m. and, therefore, the trial court examined the meaning of the word "public". The trial court held that the word Achhut" did not indicate utterances of any caste and normally the word "Acchut" is implied to suggest the backward class or untouchable. Similarly, the trial court held that the incident alleged had not taken place in the public

view or in the public knowledge, as admittedly it had taken place in the office located on the 3rd floor of the Anand Bhavan Building and in the presence of the complainant and the other two prosecution witnesses i.e. PWs 2 and 3. It was for these reasons that the trial court acquitted the accused. The reasoning set out by the trial court does not call for reconsideration at the hands of this court.

4. Hence, leave to appeal is refused and the application is rejected.

(B.H. Marlapalle,J.)